

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4205 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SUPUDU ROHIDAS

Versus

STATE OF GUJARAT

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Appearance:

MR HARIN P RAVAL for Petitioner

MR DA BAMBHANIA for Respondents.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/09/96

ORAL JUDGEMENT

Rule. Mr. Bambhania, learned Additional Government Pleader appearing for the respondents waives service for the respondents. With the consent of the learned advocates for the parties, the petition is taken up for final hearing to day.

2. The petitioner herein, an unarmed police constable, has been suspended from service on account of

his failure to prevent the offence of decoity which took place during the night hours on 20th May, 1996. It is the respondents' case that the petitioner and other police officers were on night patrol duty on the relevant date. At that time, an offence of decoity was committed at the residence of the Customs Inspector. People raised alarm. However, though the petitioner and other Officers were on patrol duty, they did not pursue the criminals and allowed them to escape under the shelter of dark. In the order of suspension, it is mentioned that the petitioner did not carry service rifle or other ammunition alongwith him on patrol duty. He merely carried a stick and on account of his, thus, being unarmed, he could not pursue the criminals.

3. It is the specific case of the petitioner herein that he is unarmed police constable and that he is not supposed to carry weapon. He being an unarmed police officer, no weapon is issued to him. He has further stated that he did carry stick and he did pursue the criminals. However, the criminals escaped under the shelter of dark. Specific case of the petitioner herein that he was not supposed to carry any arm or weapon has not been denied by the deponent in his counter affidavit. There is no specific averment in the affidavit in reply made by the deponent that though the petitioner was unarmed police constable, he being on night patrol duty, was supposed to carry weapon alongwith him. In absence of such specific denial or assertion, the impugned order of suspension must be held to have been made without application of mind. The order of suspension dated 10th June, 1996 annexure "A" to the petition is, therefore, quashed and set aside. The respondents are directed to issue necessary posting orders in favour of the petitioner herein. It is, however, clarified that in the event it is felt necessary, the petitioner may be transferred out of place. The petitioner is accordingly allowed. Rule is made absolute with no order as to costs.

13.9.96. \*\*\*\*\*

vyas